

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF THE NORTH MCLEAN)
COUNTY WATER DISTRICT FOR A CERTIFICATE)
OF PUBLIC CONVENIENCE AND NECESSITY TO) CASE NO. 2012-00254
CONSTRUCT AND FINANCE A WATER)
IMPROVEMENT PROJECT PURSUANT TO KRS)
278.020 AND 278.300)

ORDER

North McLean County Water District ("North McLean District") has applied for a Certificate of Public Convenience and Necessity to construct its Kentucky Highway 136/Kentucky Highway 250 Water Line Construction Project and for authorization to enter into an Assistance Agreement with Kentucky Infrastructure Authority ("KIA") to borrow \$250,000.¹

Having reviewed the application and being otherwise sufficiently advised, the Commission finds that:

1. North McLean District, a water district organized pursuant to KRS Chapter 74, owns and operates facilities that distribute water to approximately 1,311 customers in McLean County, Kentucky.²

¹ On June 18, 2012, North McLean District submitted its Application to the Commission. This Application made no reference to a Certificate of Public Convenience and Necessity. On July 26, 2012, North McLean District amended its Application to further request a Certificate of Public Convenience and Necessity. In its Amended Application, it also sought a deviation from 807 KAR 5:001, Section 11(2)(a), to permit the filing of a financial exhibit that covered a 12-month period of operations that was more than 90 days from the date of the filing of its Application. On August 6, 2012, the Commission granted this deviation and accepted North McLean District's Application, as amended, for filing.

² *Annual Report of North McLean County Water District to the Public Service Commission of Kentucky for the Calendar Year Ended December 31, 2011* at 5, 27.

2. North McLean District proposes to construct a water transmission main to connect a master meter located near the Calhoun Water Works' water storage tank to a 10-inch polyvinylchloride ("PVC") water main located on Kentucky Highway 250 in McLean County. The proposed water main will run mostly along Kentucky Highway 136. The proposed project is named the "Kentucky Highway 136/Kentucky Highway 250 Water Line Construction Project" ("the Project").

3. The Project consists of 7,737 linear feet of 16-inch PVC water main, 3,813 linear feet of 12-inch PVC water main, 40 linear feet of 16-inch ductile iron water main, and 18 linear feet of 8-inch ductile iron water main.³

4. The Project's total cost is estimated to be \$737,871.

5. The Project consists of two phases.

a. The first phase involves the construction of 5,241 linear feet of 16-inch PVC water main, 2,724 linear feet of 12-inch PVC water main, 40 linear feet of 16-inch ductile iron water main, and 18 linear feet of 8-inch ductile iron water main. This phase runs from a master meter located near the Calhoun Water Works' water storage tank to a point slightly east of the intersection of Sanitation Lane and Kentucky Highway 136. Total cost of the first phase is \$487,871.⁴

³ Amended App. Ex. A.

⁴ The Commission determined this cost by subtracting the estimated cost of the second phase of the Project from the Project's total cost.

b. The second phase consists of the construction of 2,496 linear feet of 16-inch PVC water main and 1,089 linear feet of 12-inch PVC water main.⁵ It runs east along Kentucky Highway 136 and northeast along Kentucky Highway 250. Total cost of the second phase is estimated to \$250,000.⁶

6. The Project is expected to increase flow volume and pressure available to fully operate a pump station located on Kentucky Highway 250 and to improve system reliability and water pressure during periods of high water demand.

7. North McLean District proposes to finance the Project with internally generated funds of \$37,871, state budget appropriations of \$450,000,⁷ and \$250,000 from the proceeds of a loan from KIA.

8. North McLean District began construction of the first phase of the Project on or about November 30, 2009.

9. North McLean District completed the first phase of the Project on or about May 14, 2010.

10. North McLean District funded the first phase of the Project through legislative appropriations and internally generated funds.

⁵ Amended App. Ex. A. In its approval of the plans and specifications for the second phase of the Project, the Kentucky Division of Water states the second phase involves the construction of 2,661 linear feet of 16-inch PVC water main and 1,092 linear feet of 12-inch PVC water main. See Letter from Greg Goode, P.E., Water Infrastructure Branch, Kentucky Division of Water, to Michael Latham, General Manager, North McLean County Water District (Nov. 9, 2011). Based upon the request for bids, the second phase consists of 2,671 linear feet of 16-inch PVC water main and 1,086 linear feet of 12-inch PVC water main. See Amended App. Ex. D.

⁶ North McLean District has awarded the contract for construction of the Phase II facilities to Bailey Excavating, LLC based on a submitted bid of \$205,883. In addition to the cost of construction, North McLean District estimates design, inspection, and contract administration fees of \$38,060 and contingencies of \$6,061.

⁷ See 2008 Ky. Acts Ch. 191 (allocating \$200,000 to McLean County Fiscal Court for waterline extensions); 2006 Ky. Acts Ch. 252 (allocating \$250,000 to McLean County Fiscal Court for water and sewer improvements).

11. North McLean District did not obtain a Certificate of Public Convenience and Necessity for the first phase of the Project prior to commencing or completing the first phase of the Project.

12. As KRS 278.020(1) requires the issuance of a Certificate of Public Convenience and Necessity prior to the commencement of construction and as construction of the first phase of the Project is completed, no Certificate of Public Convenience and Necessity can be issued for that phase of the Project.⁸

13. DLZ Kentucky, Inc. of Frankfort, Kentucky prepared the plans and specifications for the Project's second phase.

14. The Division of Water of the Kentucky Energy and Environment Cabinet has approved the proposed plans and specifications for the Project's second phase.⁹

15. As the total cost of the second phase of the project does not exceed \$500,000 and is a water line improvement project, the second phase does not require a

⁸ See, e.g., Case No. 92-532, *Petition of Boone County Water and Sewer District for Approval of a Certificate of Convenience and Necessity to Construct Sanitary Sewer Facilities* (Ky. PSC Dec. 9, 1993); Case No. 90-305, *Application of Southern Madison Water District for Certificate of Convenience and Necessity to Construct Storage Facilities* (Ky. PSC Nov. 1, 1991).

⁹ Letter from Greg Goode, P.E., Water Infrastructure Branch, Kentucky Division of Water, to Michael Latham, General Manager, North McLean County Water District (Nov. 9, 2011).

Certificate of Public Convenience and Necessity.¹⁰ That portion of North McLean District's Application that requests a Certificate of Public Convenience and Necessity should be denied as moot.

16. North McLean District proposes to enter an Assistance Agreement with the KIA to borrow \$250,000.¹¹ Under the terms of this Agreement, approximately 80 percent of the principal amount, or \$200,000, will be forgiven. North McLean District will incur total loan indebtedness of \$50,000 that will be paid over a 20-year period at an interest rate of two percent per annum.

17. The proceeds of the Assistance Agreement will be used to finance the cost of the Project's second phase.

¹⁰ 2012 Ky. Acts Ch. 144. This Act provides in pertinent part:

Water Districts and Water Associations: A water district created pursuant to KRS Chapter 74 and a water association formed under KRS Chapter 273 that undertakes a waterline extension or improvement project shall not be required to obtain a certificate of public convenience and necessity, notwithstanding KRS 278.020(1), if the water district or water association is a Class A or B utility as defined in the Uniform System of Accounts established by the Public Service Commission, pursuant to KRS 278.220, as the system of accounts prescribed for utilities in Kentucky, and either: (a) The water line extension or improvement project will not cost in excess of \$500,000; or (b) The water district or water association will not, as a result of the water line extension or improvement project, incur obligations requiring Public Service Commission approval pursuant to KRS 278.300. In either case, the water district or water association shall not, as a result of the water line extension or improvement project, increase rates to its customers.

Commission Staff has opined that a Certificate of Public Convenience and Necessity is required for the Project. PSC Staff Opinion 2012-011 (May 21, 2012). This opinion was based upon the assumption that no portion of the Project had yet been constructed and that the Project would not be constructed in phases. Were that assumption valid, Commission Staff's opinion would be correct.

¹¹ KIA has awarded a \$250,000 loan to McLean County Fiscal Court, but has agreed that this award may be assigned to North McLean District. McLean County Fiscal Court has requested that North McLean District be the recipient of the loan and legally obligated for its payment. McLean County Fiscal Court Resolution 3.15.11-5 (Mar. 15, 2011). North McLean District has indicated its willingness to accept responsibility for the loan. North McLean County Water District Resolution (Mar. 21, 2011). The record contains no evidence that an assignment has been made.

18. North McLean District's proposed loan is for a lawful object within its corporate purpose, is reasonably necessary and appropriate for and consistent with the proper performance of its service to the public, will not impair North Mclean District's ability to perform that service, and is reasonably necessary and appropriate for such purpose.

IT IS THEREFORE ORDERED that:

1. North McLean District's Application for a Certificate of Public Convenience and Necessity for the Project is denied as moot, because the Project's first phase has been constructed and the Project's second phase costs less than \$500,000.

2. North McLean District shall file a copy of the "as-built" drawings of the second phase of the Project and a certified statement from the engineer that the construction has been satisfactorily completed in accordance with the contract plans and specifications within 60 days of substantial completion of the Project's second phase.

3. North McLean District is authorized to enter into an Assistance Agreement with KIA to borrow \$250,000 for the purpose of funding the Project's second phase.

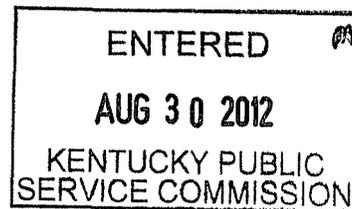
4. Within 30 days of executing the Assistance Agreement, North McLean District shall file with the Commission a copy of the Assistance Agreement and any documents referenced in that agreement

5. The proceeds from the Assistance Agreement shall be used only for the lawful purposes specified in North McLean District's Application.

6. Any documents filed pursuant to ordering paragraphs 2 and 4 of this Order shall reference the number of this case and shall be retained in the utility's general correspondence file.

Nothing contained herein shall be construed as a finding of value for any purpose or as a warranty on the part of the Commonwealth of Kentucky or any agency thereof as to the funding authorized herein.

By the Commission



ATTEST:

Executive Director

Honorable John O Hicks
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